IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/09/2004

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

W.P.12151 of 1997
and
W.P.9992 of 1996

1. Mangaiyarkarasi
2. Angayarkanni
3. Vedambal .. Petitioners in both WPS

-Vs-

1. The State of Tamilnadu,
rep. by the Secretary to
Govt., Adi-Dravida Schedule
Tribal Welfare Dept.,
Chennai.

2. The Special Tahsildar,
Land Acquisition,
Adi Dravida Welfare,
Tanjore.

3. The District Collector,
Thanjore. .. Respondents in both Wps.

Writ Petitions filed under Article 226 of the Constitution of India
praying for the reliefs as stated therein.

For petitioners : Mr.N.Muralikumaran

For respondents : Mr.R.Chandrasekaran, Govt. Advocate

:O R D E R

Both the above writ petitions have been filed praying to issue Writs of Certiorari respectively calling for the records of the third and first respondents in their proceedings dated 8.2.1996 in relation to the acquisition of lands to the extent of 0.13.0 and 0.10.5 hectares respectively and quash the same.

2. The case of the petitioners is that the notification under Section 4(2) of the Land Acquisition Act has been made on 30.4.1997 and that a

publication by substituted service has been made under Section 4 (2) of the Act. The contention of the petitioners is that instead of service of notice to all the interested parties, including the petitioners, mere substituted service ordered by the respondents is improper, as a result of which, the petitioners were not in a position to partake the enquiry the proceedings under Section 5-A.

3. Learned counsel appearing on behalf of the petitioners would emphatically argue to the effect that the brother of the petitioners appeared before the Land Acquisition Officer during the time of enquiry conducted under Section 5-A and apprised the fact that all the interested parties were not served with notices, particularly making a mention of the names of the petitioners, as a result of which the petitioners were not heard prior to the taking of a decision to acquire their lands and the authorities went on exhausting one proceeding after another and hence, the petitioners

have come before this Court questioning the validity of such a non-service of the notice for participating in the enquiry on ground that no opportunity was given to them for being heard.

4. On the part of the learned government advocate (writs), he would come forward to make it clear that having exhausted all the procedural paraphernalia as contemplated under law, even the award having been passed, the lands have been entrusted with the possession of the beneficiaries and they have also constructed buildings on them and nothing survives so far as both the above writ petitions are concerned.

5. Learned government advocate would also pin-pointedly deny the allegation that no opportunity was given for the petitioners to be heard and would ascertain that opportunities have been afforded to all those who were figuring in the revenue records and since no proper representation had been made to the authorities concerned, particularly the District Collector with such proof revealing that the petitioners are interested parties, they were not served with personal notices, but however, paper publication has been effected in and around the area of acquisition and that is sufficient to cover the requirement of law, and therefore, would contend that the petitioners are not aggrieved in any manner by the procedures followed in the acquisition of the lands concerned with the above petitions and would pray to dismiss both the above writ petitions.

6. Today, when the above matters have been taken up for consideration, learned counsel for the petitioners would cite a judgment of the Full Bench of this Court 1989 TLNJ 107 (Thanikavelu vs. The special Deputy Collector for Land Acquisition, Madras and another) regarding the conduct of the enquiry under Section 5-A, the issuance of notice to the interested parties, the essentiality of the same. However, it is seen that the judgment of the Full Bench of this Court would hold that 'normally, such notices are sent to person whose names are found recorded in the revenue records as persons interested. .... In such cases, if it is brought to the notice of the Collector by the erstwhile land owner or by any other person

including the present owner thereof of the name of the interested persons, the Collector as a statutory functionary cannot decline to afford an opportunity to the person who is really interested in the land and close the enquiry. When such information is brought to the notice of the Collector, it is needless to say that the principles of natural justice enjoin upon him an obligation to issue notice to the person who is found to be really interested in the land even though his name may not be found entered in the revenue records. It is true that the Government has prerogative to acquire lands belonging to individuals for a public purpose sanctioned under the theory of 'eminent domain. But the rule of law which governs and controls the executive functions is the thread that runs through the fabric of constitutional democracy. The rule of law behooves the Government to act fairly and reasonably and the principles of natural justice are the quintessence of such fair play and reasonableness. ... But, at the same time, it is made clear that individual notice is mandatory only to those persons whose names are found in the revenue records or who are found by the Collector as persons interested on information received through reliable source."

7. Therefore, no definite conclusion could be arrived at to hold that at the time of issuance of notice, particularly under Section 4(1) of the Act, either the names of such interested persons find place in the revenue records or is brought to the notice of the District Collector by either source. So far as the case in hand is concerned, even though it is claimed on the part of the petitioner that during the enquiry conducted under Section 5-A of the Act, one of their brothers informed the enquiry officer that the petitioners were also interested persons regarding the lands which are sought to be acquired and in spite of such revelations, regardless of the same, the authorities have proceeded with the enquiry without initiating any effective step to hear the petitioners also prior to deciding the matter. However, it comes to be seen that publications have been effected in the locality, besides issuance of notice to those persons whose names were found in the revenue records, and therefore, there is reason on the part of the Land Acquisition Officer to have taken into confidence only those names which were available on record to be the genuinely interested persons and have carried on with the acquisition proceedings. More so, when it comes to be reported on the part of the learned government advocate (writs) that the acquisition having come to a close by passing of the award and handing over the possession of the property to the beneficiaries and that they have also constructed buildings, nothing survives and there is no point in going back to the stage of 4(1) notification and hence, at this distant point of time regarding the service effected and enquiry conducted, it could only be decided sufficient for the purpose as required under law, and therefore, this Court is not able to substitute anything to the prayer of the petitioners in both the above writ petitions and in result, they become only liable to be dismissed and the same is decided accordingly.

In result, for the reasons assigned above, both the writ petitions do not merit acceptance and they are dismissed as such. No costs.

Consequently, W.M.P.No.19585 of 1997 is closed.

Index:Yes.

Internet:Yes.

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